IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.9588 OF 2004

Namdeo Limbaji Gaikwad .. ..Petitioner

Versus

Shashikant Kallayya Hiremath .. ..Respondent

Mr.Amit Borkar i/b V.V.Purwant for petitioner

Mr.A.A.Kumbhakoni with P.B.Shelke for respondent

CORAM : P.V.KAKADE, J.

DATE : 8TH MARCH, 2006.

P.C.:

1. Heard the learned counsel for both the parties Perused the record.

2. The Petitioner-tenant has preferred this petition against the order passed by the Addl. District

Judge, Solapur dated 8.9.2004 dismissing the appeal and confirming the judgment and order passed by the trial court evicting the petitioner from the suit premises.

2. The Respondent-original plaintiff instituted the suit against the petitioner for possession of the suit on the ground of non payment of rent, unauthorised structural alterations, non user of the suit premises and encroachment etc. The suit premises Mun. House No.103/A, CTS NO.8341/2, and more particularly described in para 1 of the plaint, is owned by the plaintiff. Out of which one room admeasuring 12 x 12 ft. facing to east was in possession of tenant as monthly tenant. The defendant has obtained the suit premises on rent from the previous landlord. The plaintiff had purchased eastern side portion admeasuring 2412.38 sq. ft. out of Munc. House No.103/A from one Singi in the year 1988 and since then he became the owner of the suit property. Monthly rent of the suit premises was Rs.100/= and the tenancy month starts on the first day of each month and ends on the last day of the said month. Apart from these, the petitioner was in arrears of rent of more than six months. It was also alleged that the petitioner-tenant was not using the suit premises

without reasonable cause for the purpose for which it was let out to him for continuous period of six months immediately preceding the date of the suit and he had put lock on the suit premises and therefore, the plaintiff had claimed possession under the provisions of the Bombay Rent Act. It was further alleged that the defendant had fixed a new door in the western wall of the room rented to him. He had also constructed a room admeasuring 8 x 12 ft. in the open premises to the western side of the above one room without permission of the landlord and the said newly constructed room was facing towards North. There was one east-west lane admeasuring 5 x 20 ft. to the north of the above two rooms, but the defendant had raised wall to the eastern side and fixed door to the west side of the said lane and by this method the defendant had closed the said lane of 5 x 20 ft. It was further alleged that the defendant had made encroachment over the western side open premises by constructing one room admeasuring 12 x 8 ft. and the said act of the defendant was contrary to the provisions of Clause (O) of Section 108 of the Transfer of Property Act and also under Section 13(1)(a) and (b) of the Bombay Rent Act and hence suit came to be filed (R.C.S.No.243/1999) for possession of the

encroached premises against the defendant. Another suit being RCS No.244/1999 came to be filed under the provisions of the Bombay Rent Act seeking eviction of the tenant on the above noted grounds.

. The petitioner-defendant resisted the suit claim, inter alia, denying the allegations and sought dismissal of the suit.

3. The trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the defendant had carried out permanent structure on suit property without consent of the plaintiff and had also encroached towards the suit property mentioned in para (A) and (B) of the plaint. It was further held that on these grounds the suit deserves to be decreed and accordingly it was decreed with order of eviction of the petitioner.

. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties came to the conclusion that the plaintiff had proved that the defendant had not used the suit premises for the period more than six months without any reasonable

cause immediately preceding the date of the suit. It was further held that the defendant had carried out permanent structure on the suit property without consent of the landlord and as such the finding recorded by the lower court was confirmed on those grounds and appeal was dismissed. Hence, the present writ petition.

4. At the outset, it may be noted that the record shows that one suit came to be filed under Ordinary Civil Jurisdiction while other suit came to be filed under the provisions of the Bombay Rent Act. It is also not in dispute that the jurisdiction of the Ordinary Civil Jurisdiction as well as Bombay Rent Act were vested in one individual judge and therefore, both the suits were pending in his court. It further appears from the record that in view of the convenience of both the parties as well as the court and to save the time the trial court, by consent of both the parties, thought it fit to record common evidence in both the suits, as the issues involved appear to be similar in nature as well as the parties were the same and as such both the suits were tried together with consent of the parties and ultimately were decreed holding that the defendant was liable to be evicted under the provisions of the

Bombay Rent Act as well as under the Ordinary Civil Jurisdiction for contravention of the provisions of Section 106 of the Transfer of Property Act.

. The learned counsel for the petitioner vehemently urged that it was necessary for the trial court to adjudicate both the suits independently and even though the jurisdiction under both the laws was vested in one individual judge, it was illegal on the part of the trial court to put up the suits together for the purpose of adjudication and hence the illegality has vitiated the trial. In support of this submission the advocate for the petitioner has put reliance on the case of the **Govindbhai Parshottamdas Patel and ors. vs New Shorrock Mills, Nadiad reported in AIR 1984 GUJARAT 182**. However, perusal of the said judgment shows that the ratio laid down by the said Division Bench of the Gujarat High Court is not applicable to the present case. The ratio of that case is to the effect that when the same person or individual is invested with two different jurisdictions, it would not be open to exercise two different jurisdictions simultaneously in one and the same proceeding. In this regard it must be noted that it appears from the details of the said

ruling that the same individual judge had taken up issue to adjudicate the dispute under the Bombay Rent Act as well as the Ordinary Civil Jurisdiction in one and the same suit, which is not the case here. In the present case before us, the individual judge has dealt with two different suits in order to save the time in recording of the evidence by consent of both the parties. In other words, if the petitioner wanted to challenge the decree passed under the Bombay Rent Act only, it was open for him to do so, similarly if he wanted to challenge the decree passed under the Ordinary Civil Jurisdiction, it was still open for him to do so and therefore, in my considered view, there is no illegality committed by the learned judge by clubbing both the suits for the sake of convenience for recording common evidence in both the suits together.

5. Once we come to this position, the perusal of judgment of both the courts showed that they have appreciated the factual aspects of the evidence in proper perspective and findings are recorded in just, legal and proper manner on the basis of available evidence. There is absolutely no perversity in recording the findings. For the instance the evidence

pertaining to the non user of the suit premises is more sufficient to show that the petitioner is not residing in the suit premises at all, which is manifest from not only the report of the Court Commissioner but also from the fact, which is established by cogent evidence that he is residing at village Hamangaon at the distance of half kilometre from Solapur and cultivating agricultural land there. There is neither any Ration Card nor appearance of his name in the Voters List on the address of the suit premises. The suit notice which was sent to the petitioner at the suit address also returned back with an endorsement that the petitioner is not residing there. In the light of this evidence, in my considered view, the respondent had discharged his burden to establish that the defendant was not residing in the said premises and therefore, it was necessary for the petitioner himself to rebut the same which arose from the entire evidence, in which task he has failed.

6. Similarly, with regard to the finding recorded by the lower appellate court in respect of permanent structure of the suit property without consent of the landlord, the learned counsel for the petitioner relied upon various rulings of this court as well as Apex

Court, however, from perusal thereof, I am satisfied that those are not applicable to the present case, and therefore, the finding with that regard also would brook no interference.

7. In the result, I hold that petition is devoid of any merits and as such deserves to be dismissed and stands dismissed with no order as to costs.

8. At this stage the learned counsel for the petitioner sought Stay of this order. However, in view of the facts involved in the dispute apparently shows that the petitioner is not residing in the suit premises, and therefore, no purpose would be served by Staying the order. Hence plea for Stay stands rejected.